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FM AMEMBASSY SANTO DOMINGO
TO RUEHC/SECSTATE WASHDC IMMEDIATE 2396
INFO RUEHZA/WHA CENTRAL AMERICAN COLLECTIVE PRIORITY
RUEHWN/AMEMBASSY BRIDGETOWN PRIORITY 2226
RUEHCV/AMEMBASSY CARACAS PRIORITY 0974
RUEHGE/AMEMBASSY GEORGETOWN PRIORITY 1136
RUEHKG/AMEMBASSY KINGSTON PRIORITY 2925
RUEHLP/AMEMBASSY LA PAZ MAR 0517
RUEHPO/AMEMBASSY PARAMARIBO PRIORITY 1260
RUEHPU/AMEMBASSY PORT AU PRINCE PRIORITY 4956
RUEHSP/AMEMBASSY PORT OF SPAIN PRIORITY 1964
RUEAIIA/CIA WASHINGTON DC PRIORITY
RHEFDIA/DIA WASHDC PRIORITY
RUEHUB/USINT HAVANA PRIORITY 0246
RUEATRS/DEPT OF TREASURY WASHDC PRIORITY
RUMISTA/CDR USSOUTHCOM MIAMI FL PRIORITY

C O N F I D E N T I A L SANTO DOMINGO 000315

SIPDIS

STATE FOR WHA/CAR, DRL, INL FOR FPALMIERI, RLEVENTHAL,
KBROWN

E.O. 12958: DECL: 03/14/2019
TAGS: [PGOV](#) [KJUS](#) [KCOR](#) [PREL](#) [DR](#)
SUBJECT: CONSTITUTIONAL REFORM - JUDICIARY IN PLAY,
PRESIDENTIAL POWERS ASCENDANT

REF: SDO 51

Classified By: Charge D'Affaires Roland Bullen for Reasons 1.4(b) and (d).

11. (C) Summary: Although the President's 2/27 Independence Day speech ran for two hours, regarding constitutional reforms he noted merely that the government's proposed changes will "strengthen" the judiciary. It is far from clear that that will be the case, given the analysis of FINJUS, a major rule of law NGO, and of others. A key question is whether a "constitutional chamber" will be added to the system. If so, its form and powers must be clearly defined. As noted, reftel, the outcome of this and some seemingly technical issues may affect the health of Dominican democracy for years to come, especially if other planned reforms strengthen the Executive Branch further. End Summary.

Many Voices at AmCham

12. (SBU) At a January meeting of the American Chamber of Commerce (AmCham) in Santo Domingo, several perspectives on the President's proposed reforms were heard. While the DR Ambassador to the U.S. put a positive spin on suggested reforms, the head of FINJUS (one of the most important rule of law NGOs) expressed grave concerns. FINJUS does support a key presidential idea: the creation of a constitutional "chamber" of some sort. However, he denounced the reforms overall as internally inconsistent and hardly worthy of being considered "a draft." The head of AmCham stated his opposition to the "dismemberment" of the judiciary. Remarkably, the Chairman of the Senate Judicial and Human Rights Committee, a high ranking official from within Fernandez's own party, also expressed concerns before the AmCham, especially about the need to maintain adequate checks and balances in the Dominican constitutional system. Discussions with some businessmen at the AmCham luncheon revealed that they are tired of having to deal with corruption in the DR and oppose reforms that might undermine the country's already weak rule of law.

FINJUS Promotes Checks and Balances

13. (C) The head of FINJUS, Servio Tulio Castanos, expanded on his critiques and FINJUS' ideas for constitutional reform on March 5, during a meeting with Embassy officials, including the Charge. Castanos began by saying that there are significant "political divisions" in the Dominican Republic over the idea of a "constitutional chamber" - called a "sala constitucional" in the draft reform presented by the President. Castanos added that while the word "sala" (or "chamber") is used, the proposal really constitutes what might more accurately be called a "court" or "tribunal."

14. (C) FINJUS believes that a "Constitutional Tribunal" that is "independent of the Judicial power" should be created. According to the NGO, this would better "consolidate the democratic system" of the DR. Supreme Court President Subero Isa, however, opposes the creation of a separate body, fearing it will be expensive and staffed by politically connected persons, not career judges. He has floated the idea of placing the "sala" within the current court's structure, thus effectively creating a constitutional chamber within that court. Castanos opined that it would have been better had Subero

Isa not proposed this idea, which FINJUS believes would make things worse. If the "extra-branch" entity envisaged by FINJUS cannot be properly created, then FINJUS believes it better to leave the situation as it now is (i.e., with a Supreme Court that handles all types of cases, without a

specialized constitutional court or chamber). FINJUS holds that the appointment problem would be solved by having all Constitutional Tribunal members selected by the National Council of Magistrates.

15. (C) In addition to the judiciary's fate, another key question is congressional oversight - long a weakness in the DR. Shortly after the AmCham event, FINJUS published an editorial calling for Ministers of the cabinet to be confirmed by the legislature, just as in the United States. If adopted, this could strengthen checks and balances in the Dominican system. Yet the current proposed reforms would weaken the Dominican congress. In view of this, Castanos would prefer not changing the current imperfect constitution for something worse.

Comment

16. (C) Comment: We were struck by the strong concerns voiced by FINJUS and the Senate committee chair from the President's own party, both of whom are respected and powerful actors here. It is clear that Fernandez has some negotiating to do.

The FINJUS proposal does contain some ambiguities, despite being clearly well intentioned and well thought out. As written, it suggests that their "Constitutional Tribunal" would decide constitutional issues after these have been raised in litigation (as in the United States). However, the mechanism for getting such issues before that tribunal is not spelled out, nor are criteria by which the National Council of Magistrates would select qualified members of such a new body. Nor does this proposal seem to take into consideration the weakness of the legislative branch - which, Castanos said, should be the "key power" - vis a vis the executive in the DR. Under such circumstances, which resemble those in France, it is unclear why FINJUS did not suggest creation of a constitutional court able to review the constitutionality of laws before they are passed (as in France), perhaps along with a Supreme Court - if not ordinary courts - empowered to decide whether a law had been constitutionally applied in practice. Nor is it obvious how a constitutional court could really be an "extra judicial" body.

17. (C) Comment continued: The passing reference to judicial reform by the President on February 27 may be a sign that he

understands that much needs to be sorted out. Yet USAID notes that the DR Congress seems to be missing a great opportunity to overhaul the balance of powers and strengthen the legislative branch, and Castanos opined that just 20 percent of legislators are engaged or capable enough to participate meaningfully in the constitutional reform process. Certainly, the government's proposal would enhance presidential powers: Reelection of presidents for two terms, with the possibility of subsequent re-elections after sitting out a term (thus potentially giving Fernandez four consecutive terms and more thereafter); presidents will be able to name an unlimited number of "sub-secretaries" to ministries (thus clearing the way for unbridled clientelism); and members of the DR Congress will be less empowered to exercise oversight of the national budget. All the more reason, then, for the Dominican Republic to get the structure and powers of the judicial branch right.

BULLEN